

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In the Matter of STEPHEN LEE ARIZOLA,  
Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AL PACINO ARIZOLA,

Respondent-Appellant,

and

STEPHANIE LYNN DYKMAN,

Respondent.

---

In the Matter of STEPHEN LEE ARIZOLA,  
Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE LYNN DYKMAN,

Respondent-Appellant,

and

AL PACINO ARIZOLA,

Respondent.

---

UNPUBLISHED

June 19, 2007

No. 275969

Muskegon Circuit Court

Family Division

LC No. 05-034211-NA

No. 275970

Muskegon Circuit Court

Family Division

LC No. 05-034211-NA

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the order terminating their parental rights to their minor child, Stephen.<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The original petition in this action only involved respondent mother's parental rights, but contained serious allegations against respondent father, who had not yet established or confessed his paternity. The petition alleged that respondent father physically abused respondent mother and held a knife to her throat while she was pregnant with Stephen. The petition also alleged that respondent mother had serious drug abuse issues and that Stephen tested positive for cocaine and opiates at his birth. Although the trial court did not immediately remove the children from respondent mother's care, the trial court took jurisdiction over the child after respondent mother affirmed the petition's veracity. The trial court also understandably required respondent mother to avoid contact with the putative father and suspended his visitation rights. Stephen was removed from his mother about three months after his birth. The decision to remove the child was attributable, in large part, to her decision to take the child and meet with respondent father at a motel. Although the father admitted that Stephen had been removed from his mother, he denied ever receiving notice of the proceedings. He later alleged that he did not live at the address where petitioner had been mailing notice.

Respondent father contends that his due process rights were violated because he was not properly served with notice of the original petition and initial proceedings. We disagree. Although respondent father's interest in caring for his child is a compelling one, *In re Render*, 145 Mich App 344, 349; 377 NW2d 421 (1985), the government also has an interest in protecting the child from not only the respondent mother's alleged substance abuse, but also the domestic violence at the hands of respondent father. See *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Jurisdiction over the child was properly established by the mother's plea, and at that time, the mother was the only verified "parent" with a recognizable parental right even though petitioner was aware of the likelihood of respondent father's paternity. *Id.* Therefore, although respondent father correctly argues that he was not initially included in the proceedings, his legal right to join the proceedings had not yet been established. After respondent was alerted to the fact that Stephen was no longer in his mother's care, he still delayed taking action to intervene, argue his lack of notice, establish his paternity, or otherwise assert his interest until he received notice that a trial to terminate both parents' rights to Stephen was imminent.

After respondent father engaged the proceedings and came forward to claim his right, the trial court afforded him notice and allowed him plenty of time to work with petitioner before

---

<sup>1</sup> The trial court relied on MCL 712A.19b(3)(g) to terminate respondent mother's parental rights and on MCL 712A.19b(3)(g) and (j) to terminate respondent father's parental rights.

holding a termination hearing regarding his rights. However, he was arrested for violating his parole on an earlier drug conviction, so he returned to prison. Nevertheless, the trial court provided him with every opportunity to rebut petitioner's evidence regarding the statutory bases for terminating his parental rights. Ultimately the court found that the statutory bases had been established by clear and convincing evidence. Respondent father was given notice of the relevant hearings and the renewed petition before any action was taken against his established rights. Moreover, the evidence suggests that respondent father knew for several months that his rights to Stephen were jeopardized and his access to him was severely restricted, but he waited until the eve of termination to come forward. Therefore, the petitioner's initial failure to mail respondent father at his correct address did not generate insurmountable procedural defects in the case, and the trial court cured any defects by providing respondent father with notice and time to work with petitioner before proceeding with a termination hearing. Moreover, his parental rights were not permanently deprived until the court found, on the basis of admissible evidence, that a statutory basis for termination was established by clear and convincing evidence presented at the properly noticed termination hearing. Therefore, this case is not like *In re CR*, *supra*, because it does not have any evidentiary or prejudicial issues related to the initial procedural irregularity. Under the circumstances, the trial court provided respondent father with notice and a fresh opportunity to defend his parental rights, so he received due process of law. *In re Render*, *supra* at 350.

Respondent father next contends that the trial court clearly erred in terminating his parental rights pursuant to MCL 712A.19b(3)(g) and (j). The termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 353. We review the trial court's factual findings for clear error. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

We acknowledge that both respondents testified that respondent father provided diapers and clothing for the child. However, providing proper care involves more than this. It entails providing a loving, safe, and stable environment for the child. Respondent father was not able to provide such an environment because of his history of domestic violence and his criminal history as a drug dealer. At the time of the termination hearing, respondent father was incarcerated for delivery of a controlled substance. Given his incarceration, and the fact that he would still have to obtain appropriate suitable housing, employment, and establish a bond with the young child, the trial court did not clearly err in finding that there was no reasonable expectation that respondent father would be able to provide proper care within a reasonable time considering the child's age. Therefore, termination was warranted under MCL 712A.19b(3)(g).

Respondent father argues that, although there were incidents of domestic violence between him and the child's mother, the child was never involved in such incidences and never witnessed such violence. However, the plain language of MCL 712A.19b(3)(j) provides for termination when clear and convincing evidence shows that there is a reasonable likelihood, based on respondent father's conduct, that the child will be harmed if returned to his home. Respondent father's history of domestic violence against respondent mother and his involvement with drugs pose a substantial risk of harm to the child. Therefore, termination was warranted under MCL 712A.19b(3)(j).

Respondent mother contends that the trial court clearly erred in terminating her parental rights under MCL 712A.19b(3)(g). A review of the record shows that she entered a plea at the May 25, 2006 hearing, admitting that she failed to provide proper care for the child, that there was no reasonable expectation that she would be able to provide such care within a reasonable time, and that termination of her parental rights was in the child's best interests. The court took her plea under advisement in order to give respondent father more time. After the termination hearing regarding respondent father, the trial court accepted respondent mother's plea. Therefore, the trial court did not err by finding that MCL 712A.19b(3)(g) was established and by terminating respondent mother's parental rights.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell